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SUPREME COURT

OF THE

UNITED STATES

Office Supreme Court U. S.
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October Term 1906

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No. 8
Original

Ex Parte:
In the matter of George Moran,
Petitioner.

Answer of Respondent to Rule to Show Cause why Writ of Habeas Corpus and Certiorari should be discharged

W. O. CROMWELL,
Attorney General of Oklahoma Territory.
DON C. SMITH,
Assistant Attorney General
of Oklahoma Territory.
For Respondent.

THE STATE CAPITAL CO. GUTHRIE, OKLAHOMA

SUPREME COURT

OF THE

UNITED STATES

October Term 1905

Ex Parte:
In the matter of George Moran,
Petitioner.

No. 22
Original

Answer of Respondent to Rule to Show Cause why Writ of Habeas Corpus and Certiorari should be discharged

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RETURN TO WRIT OF HABEAS CORPUS AND CERTIORARI.

Comes now W. H. Haskell and makes this his return to the writ of habeas corpus and certiorari issued by the above named court on the 16th day of April, A. D., 1906, at the instance of George Moran, petitioner thereof.

And for his return to said writ of habeas corpus and certiorari the said W. H. Haskell alleges and says that he is now and has been since the first day of September, A. D., 1905,

the duly appointed, qualified and acting Warden of the State Penitentiary of the State of Kansas, located at Lansing in the County of Leavenworth State of Kansas. The said W. H. Haskill admits that as warden of the State Penitentiary of Kansas he has now and has had during the term of his office as such warden the said George Moran in his custody, and that the said George Moran has been and now is confined in the State Penitentiary at Lansing, Kansas as a convict, having been duly convicted of the crime of murder in the District Court of Comanche County, Oklahoma Territory, and pursuant to said conviction was duly sentenced by said court of Comanche County, Oklahoma Territory, to be confined in the Territorial prison for and during his natural life at hard labor. That under the laws of the Territory of Oklahoma the Governor of said Territory is authorized and empowered to contract in the name of the Territory of Oklahoma with the authorities of some other state or territory for the care and custody of such persons as may be convicted of crimes by the courts of Oklahoma Territory which are punishable by confinment in the penitentiary, and to bind said Territory for the faithful performance of said contract. That pursuant to the authority so conferred by the laws of Oklahoma the several Governors of said Territory have from time to time contracted with the Warden and penitentiary authorities of the State of Kansas for the confinment, imprisonment and maintenance of the convicts of the said Territory of Oklahoma, and at all times during the confinment and imprisonment of the said George Moran in the Kansas Penitentiary the said confinement has been in pursuance of said judgment and sentence of the District Court of Comanche County, Oklahoma Territory passed on him as aforesaid on the 22nd day of April, 1903, and pursuant to which he was duly transported to said Kansas Penitentiary and confined therein pursuant to existing contracts duly entered into and authorized by the law for the maintenance of convicts of Oklahoma in the Kansas State Penitentiary. That the contract now in force and effect between the Governor of the Territory of Ok-

lahoma and the duly constituted authorities of the State of Kansas was entered into by one E. B. Jewett, the predecessor of this respondent, as warden of the Penitentiary and the Board of Directors of the Kansas Penitentiary on the 31st day of January, 1905, and a true and correct copy of said contract is hereto attached and made a part of this return.

That by the laws of the Territory of Oklahoma it is provided that the sheriff of each county within said Territory shall convey to the penitentiary designated in the manner aforesaid all persons convicted in his county and sentenced to be confined in such prison. That the sheriff shall deliver such convict or convicts together with a certified copy of the judgment and sentence of the court ordering such imprisonment to the warden of such penitentiary who shall in turn deliver to the sheriff a receipt for such prisoner so received which receipt the sheriff shall file in the office of the Clerk of the Court where sentence was had.

That pursuant to the aforesaid requirements a certified copy of the judgment and sentence of the District Court of Comanche County, Oklahoma Territory, whereby the said George Moran was on the 22d day of April, 1903, sentenced to be confined in the penitentiary for the period of his natural life, was duly delivered to the Warden of the Kansas Penitentiary and was received by the said W. H. Haskell upon his coming into said office and ever since has been and now is in his possession, and a true and correct copy of said sentence of the District Court of Comanche County, Oklahoma Territory so delivered to the said Warden of the Kansas Penitentiary is hereto attached and made a part of this return.

Your respondent further answering denies that your petitioner was indicted by a federal grand jury or prosecuted by one Horace Speed, the then United States District Attorney for the District of Oklahoma, as alleged by your petitioner in the thirteenth paragraph of his petition, but your respondent on the contrary alleges the fact to be that your petitioner was

tried in the Distirct Court of the Fifth Judicial District sitting in and for the County of Comanche, Territory of Oklahoma. That the indictment is entitled "Territory of Oklahoma, Plaintiff vs. Mart Perkins, Bert Casey and George Moran, Defendants", and said indictment was signed by Walter C. Stevens, the then County Attorney of Comanche County, Oklahoma Territory; all of which is shown by a true and correct copy of the indictment with its endorsement thereon which copy is hereto attached and made a part of this return.

Your respondent, however, admits that the Honorable Horace Speed, the then United States District Attorney for the District of Oklahoma did appear at the trial of said case and assist in the prosecution thereof, having been employed by the father of Joseph Phillip Beemblossom to then and there appear and assist in the prosecution of said cause.

That the making of said contracts aforesaid and the confinement of said Oklahoma convicts in the Kansas State Penitentiary has been duly authorized and recognized by the laws of the State of Kansas.

That pursuant to the authority aforesaid that said George Moran is being duly and lawfully confined and imprisoned in the Kansas State Penitentiary as the Territorial Penitentiary of the Territory of Oklahoma for the purpose of serving out the sentence and judgment of the said court so imposed upon him as aforesaid.

WHEREFORE, Your respondent, the said W. H. Haskell, having fully answered, asks that the prayer of the petition of your petitioner be denied, and that he be remanded to the custody of your respondent and that these writs be discharged.

W. O. CROMWELL,
Attorney General of Oklahoma Territory.

DON C. SMITH,
Assistant Attorney General
of Oklahoma Territory.
For Respondent.

State of Kansas County of Leavenworth, ss.

W. H. Haskell of lawful age being duly sworn, upon his oath deposes and says, that he has read the foregoing return to the writ of habeas corpus and certiorari sued out by George Moran, and knows the contents thereof, and that the facts therein stated and that the allegations therein are true.

W. H. HASKELL

Subscribed and sworn to before me this 8th day of May, A. D., 1906.

CHARLES ERNST

Notary Public

My Commission expires July 24, 1906
(SEAL.)

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT SITTING IN AND FOR THE COUNTY OF COMANCHE, TERRITORY OF OKLAHOMA.

Territory of Oklahoma, Plaintiff, vs. Mart Perkins, Bert Casey and George Moran, Defendants, indictment.

Commission expires July 24, 1906.

INDICTMENT.

District Court of the Fifth Judicial District sitting in and for the County of Comanche, Territory of Oklahoma,

Begun and Held at Lawton, in said County and Territory, on the 24th Day of February, in the Year of Our Lord One Thousand Nine Hundred and Two.

The Grand Jurors of the Territory of Oklahoma ,within and for said county, having been duly summoned, empanelled, sworn and charged to inquire into and a true presentment make of all public offenses against the laws of the Territory of Oklahoma, committed and triable within said county, upon their oaths aforesaid, in the name and by the authority of the Territory of Oklahoma, do find and present:

That on the 4th day of August in the Year of our Lord One Thousand Nine Hundred and One, at and within said County and within the jurisdiction of said county, Mart Perkins, Bert Casey and George Moran, then and there being did then and there unlawfully, wilfully and feloniously, premeditatedly, of their malice aforethought, and from deliberate and premeditated design to effect the death of Joseph Phillip Beemblossom, did make an assault upon the said Joseph Phillip Beemblossom, and the said Mart Perkins a certain revolver

then and there charged with gunpower and leaden bullets, which he, the said Mart Perkins in his hands then and there had and held, at and against the said Joseph Phillip Beemblossom then and there unlawfully, wilfully, feloniously, premeditatedly and of his malice aforethought, and from a deliberate and premeditated design to effect the death of Joseph Phillip Beemblossom, did shoot off and discharge, and that the said Mart Perkins with the leaden bullets aforesaid, by means of shooting off and discharging the revolver so loaded to, at and against the said Joseph Phillip Beemblossom, then and there unlawfully, wilfully, feloniously premeditatedly and of his malice aforethought,, and from a deliberate and premeditated design to effect the death of the said Joseph Phillip Beemblossom, strike, penetrate and wound the said Joseph Phillip Beemblossom, in and upon the body of him, the said Joseph Phillip Beemblossom, with the bullets aforesaid, by means of the Shooting off and discharging of the revolver so loaded, to, at and against the said Joseph Phillip Beemblossom, and by such striking and penetrating and wounding certain mortal wounds in and upon the body of him, the said Joseph Phillip Beemblossom of which mortal wounds the said Joseph Phillip Beemblossom did then and there instantly die; and that the said George Moran and Bert Casey then and there unlawfully, wilfully, feloniously, premeditatedly, and of their malice aforethought, and from deliberate and premeditated design to effect the death of said Joseph Phillip Beemblossom, were present, aiding, abetting, comforting, procuring assistance and maintaining the said Mart Perkins in the felony and murder aforesaid in manner and from to do and commit.

And so the Grand Jurors aforesaid, upon their oaths aforesaid, do say that the said Mart Perkins, Bert Casey and George Moran, him the said Joseph Phillip Beemblossom, in the manner and by the means aforesaid, feloniously, wilfully, of their malice aforthought and from a deliberate and premeditated design to effect the death of the said Joseph Phillip Beemblossom, did kill and murder, contrary to the form of the stat-

ute in such cases made and provided and against the peace and dignity of the Territory of Oklahoma.

WALTER C. STEVENS,
County Attorney.

Endorsed on back: No. 7. District Court of Comanche County, Oklahoma Territory, February Term, A. D. 1902. Territory of Oklahoma vs. Mart Perkins, Bert Casey and George Moran. Indictment. A true bill. Bert Howard, foreman.

JUDGMENT AND SENTENCE

Territory of Oklahoma, Plaintiff vs. George Moran, Defendant.

Now, at this time, to-wit: April 22nd, A. D., 1903, the same being one of the regular judicial days of the April Term, A. D., 1903, of said Court, the said defendant in the above-entitled cause, George Moran, appears and is present before the bar of said court and by his counsel, Cruce & Cruce, and the said defendant having heretofore been indicted for the offense of murder, and having heretofore plead not guilty of the offense charged in said indictment, and having heretofore been tried by a lawful jury, and by said jury found guilty of the offense of murder, as charged in said indictment, and having heretofore filed a motion for a new trial in said cause, and the same having been overruled, and having filed a motion in arrest of judgment in said cause, and the same having been overruled, by said Court, and the Court having heretofore appointed this time for pronouncing judgment and sentence of said court in said cause, the said defendant is now informed by the Court of the nature of the indictment, and plea and the verdict of said jury in said cause, and is asked by the Court whether he has any legal cause to show why judgment should not be pronounced against him, and no sufficient cause being alleged by said defendant, or appearing to the Court why judgment should not be pronounced; thereupon it is now ordered, considered, sentenced and adjudged by the Court that said defendant, George Moran, is guilty of the offense of murder, as found by said jury, and as charged in said indictment; and that he for the offense by him committed, be imprisoned in the Territorial prison at Lansing, Kansas and confined therein at hard labor for the term of his natural life. To all of which defendant then and there excepts.

Thereupon the Court notifies the said defendant of his right to an appeal in said Cause to the Supreme Court of the Ter-

ritory, and for good cause shown the Court allows said defendant ninety days in which to make and serve a case-made in said cause for the Supreme Court of said Territory, and ten days to said plaintiff to suggest amendments thereto, said case-made to be settled on five days' notice by either party to the other in writing.

It is further ordered and adjudged that the sheriff of Comanche Couty, Oklahoma, transport the said George Moran to the said Territorial prison at Lansing, Kansas, and deliver him, the said George Moran, to the Warden or keeper of said Territorial prison, and the Warden or keeper of said Territorial prison detain the said George Moran according to the foregoing order, sentence and judgment and that the Clerk of this Court immediately certify under the seal of said Court, and deliver to the sheriff of Comanche County, Oklahoma, a copy of the order, sentence and judgment of the court herein to accompany the body of the said George Moran, and to be left therewith at the said Territorial prison, the said copy to be a warrant and authority for the transportation and imprisonment of the said George Moran as hereinbefore provided.

F. E. GILLETTE, Judge.

Territory of Oklahoma Comache County, ss:

I, N. E. Sisson, Clerk of the District Court in and for Comanche County, Oklahoma, hereby certify the foregoing to be a true, complete and correct copy of order of committment in case No. 7, entitled Territory of Oklahoma vs. George Moran, as the same appears on file and of record, in said court.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court this 6th day of November, 1905.

N. E. SISSON, Clerk.

(SEAL).

Guthrie, Oklahoma, May 3, 1906.

Territory of Oklahoma, Secretary's office.

I do Hereby Certify that the typewritten instrument hereto attached is a true and correct copy of a contract made and entered into by and between E. B. Jewett, Warden of the Kansas State Penitentiary, Mark Tulley, C. L. King, W. H. Haskell, Directors of the Kansas State Penitentiary, and T. B. Ferguson, Governor of the Territory of Oklahoma, and approved on January 31st, 1905, by E. W. Hoch, Governor of the State of Kansas, and filed in this office on the 15th day of April, A. D. 1905, and recorded in Executive Record No. 2, pages 12 and 13.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the Territory the date first above written.

CHAS. H. FILSON
Secretary of Oklahoma Territory.

(SEAL.)

CONTRACT.

THIS AGREEMENT, Made and entered into this 31st day of January, A. D. 1905, by and between E. B. Jewett, Warden of the Kansas Penitentiary, and Mark Tulley, W. H. Haskell and C. L. King, Directors of the Kansas State Penitentiary, by and with the approval of E. W. Hoch, Governor of the State of Kansas and on behalf of the State of Kansas, as Party of the First Part; and T. B. FERGUSON, Governor of the Territory of Oklahoma, by and on behalf of said Territory of Oklahoma, as Party of the Second Part:

WITNESSETH: That whereas the said party of the second part desires to contract with the said parties of the first part as the duly authorized and legal authorities on behalf of the State of Kansas for the keeping, maintenance and confinement of persons convicted of crime in the courts of Oklahoma Territory, and

WHEREAS, the said party of the second part, as Governor of the Territory of Oklahoma, is duly authorized by law to enter into a contract with the authorities of some other state for the care, maintenance and confinement of the convicts of the Territory of Oklahoma, and

WHEREAS, Said parties of the first part are duly authorized to act by and on behalf of the State of Kansas for the purpose of making and entering into a contract with said party for the keeping, maintenance and confinement of the convicts of the Territory of Oklahoma,

NOW THEREFORE, It is hereby agreed that the said warden of the Kansas State Penitentiary, being duly authorized therefor, is to receive and keep in the Kansas State Penitentiary at Lansing, Kansas, all of the persons convicted of crime in said Territory of Oklahoma, whose sentence under the laws of the Territory of Oklahoma is confinement in a penitentiary for one year or more and who shall be ordered by the authorities of said Territory of Oklahoma to be confined in said

Kansas Penitentiary pursuant to conviction and sentence as aforesaid.

The said persons so convicted, sentenced and received by said warden of the Kansas Penitentiary are to be by said warden provided with food, clothing, bedding, medical treatment and guarded while confined at work, being treated in every way as are the prisoners of the State of Kansas, for the sum of forty cents per day for each calendar day for each convict and continuing until the date of discharge of such convicts, by expiration of sentence or other authority of law.

All persons so convicted and sentenced to confinement in said prison are to be delivered to the Warden of said penitentiary by the authorities of the Territory of Oklahoma without expense to said party of the first part.

The warden of said Kansas penitentiary agrees to furnish each prisoner on discharge with a suit of citizens' clothing of the value of $15 and $5 in money, which said amount shall be paid to said Warden by the Territory of Oklahoma on vouchers duly made and approved.

That whenever an Oklahoma convict confined in said Kansas Penitentiary shall be adjudged insane by the authorities of the State of Kansas, as provided by law for Kansas convicts, he or she shall be returned to the sheriff of the County in Oklahoma in which said convict was sentenced or from which said convict was brought to the said Kansas Penitentiary and the sheriff of said county shall receipt to the Warden for the delivery of said prisoner. The expense incurred for such inquisition and for his or her return to Oklahoma Territory shall be borne by the Territory of Oklahoma and such prisoner so adjudged to be insane shall not be eligible for returning to the Kansas State Penitentiary unless in the opinion of the prison physician he or she is in a suitable mental condition to be returned to said Kansas penitentiary. And in case such prisoner is returned to such prison, he or she shall be kept in said prison under the original terms of this contract.

No convict shall be received under this contract into the Kansas Penitentiary who shall be less than sixteen years of age.

All accounts becoming due under this contract shall be paid within thirty days after the close of each quarter or as soon thereafter as the taxes for such purposes can be collected by the treasurer of the Territory of Oklahoma during the continuance of this contract, upon vouchers for such accounts being duly approved and filed with the auditor of the Territory of Oklahoma for allowance and payment.

THIS CONTRACT to continue and be in full force and effect from the date hereof until the 31st day of January, 1907

It is hereby expressly provided, however, that this contract may be terminated by either party giving sixty days notice in writing to the other party.

IN WITNESS WHEREOF, We have hereunto set our hands the day and year first above written.

This contract in duplicate.

E. B. JEWETT
Warden of the Kansas State Penitentiary.

MARK TULLEY
C. L. KING
W. H. HASKELL
Directors of the Kansas State Penitentiary.

T. B. FERGUSON
Governor of Oklahoma Territory.

The above and foregoing contract is hereby approved by me this 31st day of January, 1905.

E. W. HOCH,
Governor of the State of Kansas